IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

CRP.No. 319 OF 2007()

AGAINST THE ORDER DATED 14/02/2007 IN EP 118/05 IN OS.599/1994 OF SUB COURT, PALA

REVN. PETITIONER: DECREE HOLDER

SONY CYRIAC, VAZHAYIL VALLAPPADU KARA,
LALAM VILLAGE.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS: JUDGEMENT DEBTORS

1. VELLIYEPPALLIL HARD WARES,
VELLIYEPPALLIL BUILDING, PALA REPRESENTED BY
THE PARTNER V.J.MATHEW VELLIYEPPALLIL,
KIZHATHADIYOOR, PALA.

2. V.J.MATHEW, VELLIYEPPALLIL,
KIZHATHADIYOOR KARA, LALAM VILLAGE.

3. THOMAS JOSEPH, VELLIYEPPALLIL
PRAVITHANAM KARA, BHARANAGANAM VILLAGE.

4. ANNAMMA JOSEPH, VELLIYEPPALLIL
PRAVITHANAM KARA, BHARANAGANAM VILLAGE.

5. SALI RAJEN CHUNKAPPUAYIL, DO KARA,
ERATTUPETTA VILLAGE.

6. V.J.BABY VELLIYEPPALLIL,
PRAVITHANAM KARA, BHARANANGANAM VILLAGE.

R2 TO R4 & R6 BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12/07/2007 THE COURT ON THE SAME DAY, PASSED THE FOLLOWING:

CRP 319/2007

ORDER ON I.A. NO. 969/2007 IN C.R.P. 319/2007

// DISMISSED //

12TH JULY, 2007. **SD/-**
P.R. RAMAN, JUDGE.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN J.

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C.R.P. NO. 319 OF 2007

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DATED THIS, THE 12TH DAY OF JULY, 2007.

O R D E R

The decree holder in O.S. 599/1994 on the file of the Sub Court, Pala, is the revision petitioner herein. The suit was one for realization of money which was decreed on 19.5.1997 allowing the decree holder to realize a sum of Rs. 7,38,725/- with future interest at the rate of 12% and costs. the said decree was confirmed by this Court by judgment dated 7.3.2003 in A.S. No. 752/1997 and subsequently, by the apex court, by order dated 8.9.2003 in SLP (Civil) No. 15889/2003.

1. 2. Thereafter the decree holder filed E.P. 118/2005 for execution of the decree for Rs.16,02,540.24. The judgment debtors made part payments. Some payments were made through deposit in Court as per memo filed and some payments made directly in the Treasury. The decree holder contended that he had not appropriated the payments made by the judgment debtors towards the principal amount; but adjusted the same towards interest and costs. Statements were filed showing the

balance amount due by both the decree holder and judgment debtors. The judgment debtors took the stand that whatever payments made by them was accepted by the decree holder without demur and in such circumstances, the amount paid by them is to be adjusted towards the principal amount due and in that manner they filed their statement before the court below. The court below by its order dated 14.2.2007 in E.P.118/2005 accepted the statement of account furnished by the judgment debtors and held that the said statement would reveal that they credited the amount towards the principal amount and interest was calculated for the balance amount. In other words, there was no consideration of the question as to whether the said statement of the judgment debtors indicating the manner of payment was accepted by the decree holder in the absence of which it could not have been straight away adjusted the amount towards the principal amount. Both sides placing reliance on various decisions of the apex court and based on the provisions contained in Order 21 Rule 1 CPC sought to support their contention. The revision petitioner/decree holder would contend that

there is no right of appropriation given to the judgment debtors and whatever payments effected by them, the decree holder has a right to appropriate the same towards interest and costs and thereafter towards principal amount. Per contra, it was contended by the learned counsel appearing for the respondents that even though based on the apex court decision, position of law is that the provisions contained in Section 50 may not apply, there are indications in the provisions contained in Order 21 Rule 1 and also based on the general principle of appropriation that at the time of making the payment he should indicate the manner in which it should be appropriated and if accepted by the decree holder, is binding on him as amounting to an agreement between the parties.

3. In order to appreciate the contention raised by the parties, it is convenient to refer to the relevant provisions contained in Order 21. Order 21 Rule 1 prescribes the mode of payment of money under the decree. Sub-rule (1) of Rule 1, Order 21 provides that all money, payable under a decree shall be paid (a) by deposit into the Court whose duty it is to execute the decree or sent to that Court by postal money order or through a bank or (b)

out of Court, to the decree holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing or (c) otherwise, as the court, which made the decree, directs. As regards the deposit in the present case, clauses (b) and (c) are not relevant. As per sub-rule (2) of Order 21 where any payment is made under clause (a) or clause (c) of sub-rule (1), the judgment debtor shall give notice thereof to the decree holder either through the Court or directly to him by registered post, acknowledgment due.

4. In this case, amounts have been deposited by the judgment debtor and memos to that effect have been filed after serving a copy thereof to the decree holder. As per sub-rule (3) of Rule 1 as stated above, where money is paid by postal money order or through a bank, there is an obligation cast on the judgment debtor to specify in accurate terms certain particulars made mention of under clause (a) to (c) thereunder and under clause (3) thereof he has to accurately state how the money remitted to be adjusted - whether it is towards the principal, interest or cost. There is no dispute in this case that such particulars are also stated in the memo filed by the judgment debtor as

and when periodical payments are effected.

5. The short question that arises for consideration is as to whether the periodical payments effected by the judgment debtor indicating the manner in which it should be adjusted, had been accepted by the decree holder or the endorsement on the reverse side of the memo on each such occasion, the effect of which could be said to be as an implied agreement of the appropriation made in the memo.

6. As regards the manner of appropriation is concerned, the apex court in **Gurpreet Singh v. Union of India** ((2006) 8 SCC 457), after considering the provisions contained in Order 21 Rule 1, held in para 26 as follows:

> "Thus, in cases of execution of money decrees or award-decrees, or rather, decrees other than mortgage decrees, interest ceases to run on the amount deposited, to the extent of the deposit. It is true that if the amount falls short, the decree-holder may be entitled to apply the rule of appropriation by appropriating the amount first towards the interest, then towards the costs and then towards

> the principal amount due under the decree. But the fact remains that to the extent of the deposit, no further interest is payable thereon to the decree holder and there is no question of the decree-holder claiming a reappropriation when it is found that more amounts are due to him and the same is also deposited by the judgment-debtor. In other words, the scheme does not contemplate a reopening of the satisfaction to the extent it has occurred by the deposit. No further interest would run on the sum appropriated towards the principal."

7. The above decision was rendered in the context of considering a land acquisition matter and the observations contained therein has therefore to be appreciated in the context in which the question arose for consideration. In **Industrial Credit and Development Syndicate v. Smt. Smithaben H. Patel** (AIR 1999 SC 1036) the questions that arose for consideration before the apex court were as to whether a judgment debtor has any option or right to make the payment of the decretal amount in the manner he likes unilaterally, whether the mere acceptance of such amount by the creditor can be held to be agreeing to the conditions put by the judgment debtor while satisfying the decree and whether a debtor can

unilaterally insist upon the payment of the decretal amount in liquidation of the principal amount at the first instance notwithstanding his liability to pay the interest and costs?

8. Though these questions arose while considering the provisions contained in the 1908 Code, there is not much difference or changes brought out by the amended Act in this regard. It was found on facts that the decree holder had intimated the judgment debtor that the amount paid by them had not been appropriated towards the principal amount and dissatisfied with the order of the executing court, the judgment debtors filed revision petition in the High Court which was allowed and the order of the trial court was set aside. It was against that order that appeals were filed. It was noticed that immediately after the first payment was made, the decree holder had furnished the statement of accounts to the judgment debtors wherein it was specifically indicated that the payments had been adjusted towards the costs and interest and not the principal amount. In the decree also, no mode of payment of the decretal amount was prescribed except allowing benefit of payment in instalments. There was no agreement

between the parties regarding the mode of payment of the decretal amount, was also not disputed. In para 14 of the judgment, it was held that it is the admitted position that the general rule of appropriation of payments towards the debt is that in the absence of a specific condition or agreement to the contrary, the money paid by the judgment debtor is first applied in the payment of interest and cost and then when that is satisfied, in payment of capital or the principal amount. It was further held that such a principle is, however, subject to one exception, i.e. that the parties may agree to the adjustment of the payment in any other manner despite the decree and as and when such an agreement is pleaded, the onus of proving is always upon the person pleading the agreement contrary to the general rule or the terms of the decree schedule. The provisions of Sections 59 to 61 of the Contract Act are applicable in cases where a debtor owes several distinct debts to one person and do not deal with cases in which the principal and interest are due on a single debt.

9. In **Mathunni Mathai v. Hindusthan Organic Chemicals Ltd.** (1995(1) KLT 784) it was held by the apex court that the normal rule that is

followed is to allow the deposit or payment if it is in part to be adjusted towards the interest due etc. But the law or even the agreement entered between the parties may provide for adjustment of payment in a particular manner.

10. In the light of the above decisions of the apex court, it has to be held that the payments effected has to be adjusted towards interest and costs and the remaining amount towards the principal as per the general rule. So however, this is subject to an exception that there may be an agreement between the parties to adjust the payment contrary to the general rule as aforesaid and the burden of proving that there is such an agreement, lies on the party who claims the existence of any such agreement. The court below, however, did not consider as to whether there is any such agreement contrary to the general rule before it concluded to say that the above adjustment has to be made towards the principal debt alone. Thus, the court below committed a grave error in holding that the amount has to be adjusted towards the principal debt without deciding the question as to whether there is an agreement contrary to the general rule.

11. In the result, the order passed by the court below is set aside. The matter is remanded to the court below for fresh consideration in accordance with law. It is open to the parties to adduce any evidence in support of their plea that there is an agreement or not. The matter may be disposed of expeditiously.

The parties shall appear before the execution court on 17th August, 2007.

P.R. RAMAN,
(JUDGE)

knc/-